

NOTICE  
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2012 IL App (4th) 110951-U

Filed 3/9/12

NO. 4-11-0951

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Adoption of H.R., a Minor,	)	Appeal from
ROBERT A. WEBB and BOBBIE JEAN WEBB,	)	Circuit Court of
Petitioners-Appellees,	)	Champaign County
v.	)	No. 10AD77
DANIEL RAUP,	)	
Respondent-Appellant.	)	Honorable
	)	Brian L. McPheters,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's finding that respondent failed to rebut the statutory presumption of depravity (750 ILCS 50/1(D)(i) (West 2010)) is not against the manifest weight of the evidence.

¶ 2 This is an adoption case. Petitioners are Robert A. Webb and Bobbie Jean Webb, husband and wife. The child is H.R., a boy born on September 5, 2007, who has lived with petitioners since he was three months old. Respondent, Daniel Raup, is the boy's father.

¶ 3 In their petition for adoption, petitioners sought the termination of the biological parents' parental rights. They alleged that the mother, Stacie L. Raup, was willing to surrender her parental rights to H.R. (and, indeed, she did so). They alleged that respondent, the father, was unfit to be a parent. After evidentiary hearings, the trial court entered an order terminating respondent's parental rights. He appeals.

¶ 4 Like any order terminating parental rights, the trial court's order in this case rested on two essential findings: first, that the parent (respondent) was an "unfit person" within one or more of the subsections of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) and, second, that it was in the child's best interest to terminate the parent's parental rights. In his brief, respondent does not specifically challenge the second finding, that it is in H.R.'s best interest to terminate his parental rights. Instead, he challenges the first finding, the finding that he is an "unfit person" within the meaning of subsections (D)(b), (D)(c), (D)(i), and (D)(k) of section 1 of the Adoption Act (750 ILCS 50/1(D)(b), (D)(c), (D)(i), (D)(k) (West 2010)).

¶ 5 Each of those subsections is a separate, alternative definition of an "unfit person." It is unnecessary for us to discuss all those subsections, because if a parent meets the description in any one of them, the parent is an "unfit person." We will discuss subsection (D)(i) (750 ILCS 50/1(D)(i) (West 2010)). That subsection defines an "unfit person" as someone who is "depraved." The trial court found that respondent had failed to rebut the presumption of "depravity" in subsection (D)(i). Because that finding is not against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 6 I. BACKGROUND

¶ 7 A. The Interim Order

¶ 8 On November 2, 2010, the same day Stacie L. Raup signed a final and irrevocable consent to adoption, the trial court entered an interim order granting custody of H.R. to petitioners. Respondent observes in his brief: "There is no indication [in the record] that [respondent] received notice of the hearing in which petitioners received custody, nor is there any statement in the order as to the imm[i]nent danger to the minor had [respondent] been given notice."

¶ 9

B. Respondent's Felony Convictions

¶ 10

As of October 27, 2010, when petitioners filed their petition for adoption, respondent had eight felony convictions and three misdemeanor convictions. Certified copies of the convictions are in the record and were admitted in evidence in the fitness hearing. The felony convictions are as follows:

Case No.	Court	Crime	Date of Conviction
08-20009-0011	U.S. District Court, Central District of Illinois	Possession of a Firearm by a Felon	September 3, 2008
07-CF-393	Circuit Court of Vermilion County	Driving After Revocation	June 4, 2008
07-CF-393	Circuit Court of Vermilion County	Retail Theft	June 4, 2008
2000-CF-59	Circuit Court of Champaign County	Driving While Driver's License Revoked	March 3, 2000
2000-CF-10	Circuit Court of Champaign County	Domestic Battery With Prior Domestic Battery Conviction	March 3, 2000
1998-CF-1068	Circuit Court of Champaign County	Criminal Damage to Property	October 27, 1998
1995-CF-1342	Circuit Court of Champaign County	Aggravated Battery	January 16, 1996
1992-CF-1717	Circuit Court of Champaign	Unlawful Possession of a Weapon by a Felon	October 6, 1992

County

¶ 11 Respondent has the following misdemeanor convictions:

Case No.	Court	Crime	Date of Conviction
2000-CF-1888	Circuit Court of Champaign County	Possession of Cannabis	January 16, 2001
1997-CM-892	Circuit Court of Champaign County	Domestic Battery	October 28, 1997
1995-CM-551	Circuit Court of Champaign County	Criminal Trespass to a Residence	November 2, 1995

¶ 12 C. The Stipulation as to What Respondent Said in His Evidence Deposition

¶ 13 On September 3, 2008, a federal court sentenced respondent to eight years' imprisonment. He was in prison during the adoption proceedings, and he is still in prison.

¶ 14 In preparation for the fitness hearing, the parties made arrangements to take respondent's evidence deposition in the federal prison in Memphis, Tennessee. The deposition was to occur through videoconferencing. The deposition took place on August 18, 2011. Arrangements had been made for the deposition to be audio-recorded, but, somehow, there ended up being no audio recording of the deposition.

¶ 15 Consequently, the attorneys, including respondent's appointed attorney, conferred together, and, using their notes of the deposition, they reconstructed respondent's deposition testimony. By agreement, the stipulated testimony of respondent was admitted in evidence in the fitness hearing on September 6, 2011.

¶ 16 Respondent notes in his brief: "There is no indication that [respondent] was sworn

before giving the stipulated 'deposition' nor was there any indication as to whom it was in front of, if anyone, nor that he was given the opportunity to review the purported questions and answers."

¶ 17 According to respondent's stipulated testimony, he married Stacie L. Raup on May 13, 1998, and their marriage was dissolved in July 2001. Afterward, they got back together but never remarried. H.R. was born on September 5, 2007.

¶ 18 Respondent had seven children in all. Five of them were his and Stacie's children. The other two were his and Randi Raup's children.

¶ 19 At the time of H.R.'s birth, respondent was living with Stacie in a house in Urbana. The Illinois Department of Children and Family Services (DCFS) took H.R. into its custody at his birth. Until his arrest on January 11, 2008, respondent went to visitations with H.R. Visitation was supposed to be twice a week, but because H.R. was living with Stacie's cousin, Dorothy Maize, respondent visited with H.R. every day. This daily visitation continued until H.R. went to live with petitioners in approximately November 2007. Thereafter, through DCFS, respondent continued to visit with H.R. while he lived with petitioners, up until the time of his arrest.

¶ 20 Most of respondent's convictions were related to alcohol or drugs. He used drugs only when he was younger. At the time of his arrest in January 2008, he had not used drugs in five years, but he had relapsed into alcohol abuse. He had been working, and he had a nice house, but the pressure got to him, and he went out and drank. All the trouble in his life had been a direct result of alcohol. He had periods of sobriety, and then he relapsed. His longest period of sobriety was from 2003 until 2007.

¶ 21 Respondent acknowledged he had done some bad things in his life and that he needed rehabilitation. To that end, he had signed up for an "18-month reentry/religion-based program." He

also had attended anger-management classes and two drug and alcohol classes since he had been in federal prison. During the 3 1/2 years he had been in prison, he had abstained from drugs and alcohol, even though drugs and alcohol were "rampant" in the prison. His earliest possible release date was June 30, 2014.

¶ 22 D. Respondent's Witnesses

¶ 23 Respondent called the following witnesses in the fitness hearing.

¶ 24 1. *Stacie L. Raup*

¶ 25 Stacie L. Raup testified that she married respondent in 1998 but eventually divorced him on the ground of "mental cruelty." H.R. was one of her children by respondent. She considered respondent to be "a good dad when he was out of jail," but he had "been in and out of jail, non-stop." By a "good dad," she meant that he had "kept a roof over their head, and made sure there was food in the refrigerator, with his mother's help."

¶ 26 Although Stacie never saw respondent harm his own children, he choked her son Thomas in 1999 or 2000, when Thomas was four years old. He also choked Stacie on this occasion and broke her ribs. He had been drinking at the time. They both drank a lot in those days.

¶ 27 2. *Darci Franzen*

¶ 28 Darci Franzen, respondent's sister, testified that she last saw respondent at his federal sentencing hearing four years ago but that since then, she had kept in touch with him by phone calls, letters, and e-mails. She had noticed a significant change in him since he entered federal prison: his "clarity," "self-awareness," and "ability to communicate" had increased.

¶ 29 Early in the summer of 2011, when Franzen's older children, age 15 and 12, went with their grandmother to visit respondent in federal prison in Memphis, he greatly impressed the 12-year-

old with a talk on decision-making. The 15-year-old corresponded with respondent by e-mail at least twice a week. Previously, these children had no relationship with him.

¶ 30 Before going to federal prison to serve his seven-year term of imprisonment, respondent had trouble with alcohol and drugs, despite substance-abuse treatment. When petitioners' attorney asked Franzen how often she had seen respondent "under the influence of something," she answered: "I wasn't often around him, based on decisions that he made, so I can't say that I can say that it was often. I wasn't around him very often."

¶ 31 The guardian *ad litem* asked Franzen what sorts of "decisions" she meant. She answered: "Just, you know, like I said, he—if there were ever occasions that he were drinking, I wouldn't want to be around it. And you know, his control of his behaviors was not something that I wanted around me, in my life."

¶ 32 The guardian *ad litem* asked Franzen:

¶ 33 "Q. Do you have an opinion about if he's released from prison, if he would be able to control his alcohol or drug consumption if he's out of the structured environment of a prison?

A. You know, that's a question I can't answer. I know that it's something that once you're away from it for seven years, I think you could certainly have a lot better handle on controlling that. Whether he would go back to it or not, you know, there's no way that I can predict that. I would hope not. I know he doesn't want to. I know he's trying to get the help that he needs to make sure that he doesn't do that."

Franzen said that when respondent was released from prison, he was welcome to stay in her home and she would have no reservations about his being around her children.

¶ 34

### *3. Karen Rice*

¶ 35 Respondent's mother, Karen Rice, testified that she was employed as a supervisor in the neurodiagnostic laboratory of Carle Clinic, a position she had held for 31 years. She had an adopted daughter, Courtney, who was 12 years old. Courtney's biological parents were respondent and Stacie. Rice became Courtney's foster mother when Courtney was 4 1/2 months old and adopted her when she was 3 or 4 years old.

¶ 36

Rice also provided financial help to respondent when his other children were living with him. Because of his bipolar disorder, with which he was diagnosed some 10 years ago, respondent had been unable to keep a job or a permanent address. The alcohol was self-medication for the bipolar disorder. When intoxicated, he was irritable, impatient, and out of control. He had a bad temper. Rice could tell when he was off his medication, because when he was on his medication, his mood stabilized, and he was much calmer and could sleep, whereas when he was off his medication, he was irritable and impulsive and lost his temper easily and could not sleep. He became easily frustrated when under pressure. He had been in three or four rehabilitative programs, but none of the programs was permanently successful. When he returned home and got into a stressful situation again, he resumed his drinking.

¶ 37

Since going to federal prison, though, respondent has calmed down a lot. He says he has been taking his medication. He acts as if he has been doing so. His speech now is normal instead of rushed. He is happy and pleasant and stays on topic in conversation. Rice has never seen him lose his temper when she has visited him in prison. Courtney now relishes talking with him, and

she is upset if she happens to be away when he telephones home.

¶ 38 E. The Trial Court's Finding That Respondent Is an "Unfit Person"

¶ 39 On September 6, 2011, the trial court found respondent to be an "unfit person," and at the conclusion of a further evidentiary hearing on September 22, 2011, the court found it would be in H.R.'s best interest to terminate respondent's parental rights.

¶ 40 In its order of September 22, 2011, terminating respondent's parental rights to H.R., the trial court reiterated the grounds on which it had found respondent to be an "unfit person":

(a) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare, 750 ILCS 50/1(D)(b);

(b) Desertion of a Minor Child for more than three months next preceding the commencement of the adoption proceeding, 750 ILCS 50/1(D)(c);

(c) Unrebutted habitual drunkenness or addiction to drugs, other than those prescribed by a physician for at least one year prior to the commencement of the adoption proceeding, 750 ILCS 50/1(D)(k);

(d) Unrebutted depravity, including at least 3 felony convictions, at least one being within five years prior to the commencement of the adoption proceeding, 750 ILCS 50/1(D)(i)."

¶ 41 This appeal followed.

¶ 42

## II. ANALYSIS

¶ 43 A. Respondent's Motion To Strike Argumentative Matter from Petitioners' Brief

¶ 44 Respondent has filed a motion to strike argumentative matter from petitioners' brief. We grant the motion. We will disregard the argumentative matter that respondent identifies in his motion.

¶ 45 The "Statement of Facts" in a brief should consist of "the facts necessary to an understanding of the case, stated accurately and fairly *without argument or comment*, and with appropriate reference to the pages of the record on appeal." (Emphasis added.) Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). When reading a "Statement of Facts," we do not wish to know whether the author considers those facts to be "sad" or "troubling" or whether the author considers certain testimony to be "admirable." We are equally uninterested in what the author thinks the facts prove or disprove. Save the arguments for the "Argument" section.

¶ 46 We might add that, even in the "Argument" section, a saccharine cliché such as "a mother's fondest hope" and a melodramatic cliché such as "[h]is worst demon is alcohol" would tend to undermine the seriousness of one's brief. In any event, inserting these editorial nuggets in the "Statement of Facts" was a clear violation of Rule 341(h)(6), and as the supreme court has said, supreme court rules are rules, not suggestions (*Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002)).

¶ 47 B. The Admission of Respondent's Reconstructed Evidence Deposition

¶ 48 Respondent argues in his brief that the "[a]dmission of [his] reconstructed 'testimony' was clearly erroneous." This argument gives us occasion to point out respondent's own violation of Rule 341. Rule 341(h)(3) provides: "The appellant must include a concise statement of the



dimension may be harmless." *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). See also *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 626 (2007) ("This due process violation is subject to harmless error analysis.").

¶ 53

#### D. The Finding of Depravity

¶ 54

Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2010)) provides:

"There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies \*\*\* and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." Respondent has more than enough felony convictions to raise this statutory presumption of depravity, and at least one of the felony convictions (more precisely, three of them) took place within five years before the filing of the petition for adoption, in which petitioners sought the termination of his parental rights.

¶ 55

Thus, respondent had to come forward with evidence rebutting the statutory presumption of depravity (*In re J.A.*, 316 Ill. App. 3d 553, 562-63 (2000)); he had to come forward with evidence overcoming the presumption that he was deficient in "moral sense and rectitude" (*Stalder v. Stone*, 412 Ill. 488, 498 (1952)).

¶ 56

Not just any evidence will burst the bubble of the presumption if the presumption is strong. The supreme court has explained: "The amount of evidence that is required from an adversary to meet the presumption is not determined by any fixed rule. A party may simply have to respond with some evidence or may have to respond with substantial evidence. If a strong presumption arises, the weight of the evidence brought in to rebut it must be great." *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983). Because respondent had more than twice the number of felony convictions necessary to raise the statutory presumption of depravity (750

ILCS 50/1(D)(i) (West 2010)), the trial court could have reasonably decided that the presumption of depravity was strong and that evidence sufficient to rebut the presumption had to be correspondingly strong.

¶57 Respondent argues he came forward with sufficient evidence to rebut the presumption of depravity, "by presenting the testimony of his mother and his sister who noted positive changes in his outlook and demeanor *while incarcerated*, including the positive effects that he has had on children now that he was abstinent." (Emphasis added.) The trial court, however, could have found this evidence to be of insufficient strength to rebut the strong presumption of depravity, because this evidence showed how respondent behaved in the structured environment of a prison, not in the far less-structured environment of society. See *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166 (1976). Granted, according to respondent's testimony in his deposition, during his imprisonment in the federal prison in Memphis, he had abstained from drugs and alcohol even though they were "rampant" in the prison. Even so, prison life is highly structured and supervised, and making the right decisions while one is being monitored by correctional personnel is not the same as making the right decisions in the relatively chaotic outside world.

¶58 It is true that the record contains some evidence of good things that respondent did in the outside world. But what the evidence gives with one hand it takes away, or diminishes, with the other. For example, Stacie Raup testified that respondent was a "good father," but she qualified that statement by adding "when he is not in jail"—and he was "in and out of jail, non-stop." She never saw him hurt his own children, but he choked her and her four-year-old son, and he broke her ribs. And because of his "behaviors" and "decisions," his sister did not want to be around him. According to Stacie, respondent provided for his family—with his mother's help, though.

Respondent stated in his deposition that he was employed at the time of his most recent arrest and that he and his family lived in a nice home. His mother testified, however, that he never could keep a job or a permanent residence.

¶ 59 In sum, "[t]he statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent and the reviewing court will give such a determination deferential treatment." *J.A.*, 316 Ill. App. 3d at 563. We defer to the trial court's finding that respondent failed to rebut the statutory presumption of depravity. That finding is not against the manifest weight of the evidence. See *In re Estate of Millsap*, 55 Ill. App. 3d 749, 751 (1977).

¶ 60

### III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the trial court's judgment.

¶ 62 Affirmed.